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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Hill-Rom Services Incorporated,

10 Plaintiff,

11 v.

12 Convergence Systems Limited, et al.,

13 Defendants.
14

No. CV-19-02223-PHX-GMS

ORDER

15 Pending before the Court are Defendants Convergence Systems Limited, et al.’s
16 (“Convergence”) and Jerry Garrett’s (“Garrett”) individual Motions to Dismiss pursuant to
17 Fed. R. Civ. P. 12(b)(2) and 12(b)(3), (Doc. 14, 15). Also pending before the Court are
18 Plaintiff Hill-Rom Services Inc.’s (“Plaintiff”) Motion for Jurisdictional Discovery (Doc.
19 18) and Motion for Protective Order (Doc. 28). For the following reasons, Convergence’s
20 Motion to Dismiss is denied and Garrett’s Motion to Dismiss is granted. Plaintiff’s Motion
21 for Jurisdictional Discovery is denied as moot. Defendants shall notify the Court within 14
22 days if they continue to object to Plaintiff’s Motion for Protective Order.¹

23 **BACKGROUND**

24 Plaintiff, an Indiana corporation, brings this action against Convergence and Garrett
25 for, *inter alia*, the theft of its trade secrets and breach of an implied in fact contract.
26 Convergence is organized under the laws of the Hong Kong Special Administrative Region

27 ¹ The request for oral argument is denied because the parties have had an adequate
28 opportunity to discuss the law and evidence and oral argument will not aid the Court’s
decision. See *Lake at Las Vegas Investors Group, Inc. v. Pac. Malibu Dev.*, 933 F.2d 724,
729 (9th Cir. 1991).

1 and maintains its headquarters there. Garrett, a member of Convergence, is a citizen of the
2 Hong Kong Special Administrative Region.

3 Plaintiff is a health company that provides a range of patient care solutions. To assist
4 healthcare personnel with the detection of incontinence events in hospital beds, Plaintiff
5 began developing moisture detection systems that would detect and signal the presence of
6 incontinence events to healthcare personnel (the “Project”). Convergence, which
7 specializes in the design of radio frequency identification (“RFID”), was part of the design
8 group on the Project. Convergence became involved in the Project through its relationship
9 with Helvetia Wireless, LCC (“Helvetia”), a non-party to this action.

10 Helvetia is a Delaware limited liability company with its principal place of business
11 in Arizona. Helvetia sought Convergence’s assistance integrating Convergence’s RFID
12 antennas and readers with Helvetia’s moisture sensor system to help prepare a prototype
13 sensor pad that could be shown, and possibly sold, to Plaintiff. As part of this collaboration,
14 Convergence and Helvetia executed a Mutual Non-Disclosure Agreement (“NDA”). The
15 NDA provides that “[a]ll Confidential Information shall remain the property of the
16 discloser.” (Doc. 14-1 at 3.) (alterations in original). The NDA also contains an Arizona
17 choice of law clause and a provision designating Arizona as the venue where disputes
18 arising out of the NDA will be arbitrated. The location where the NDA was executed is not
19 alleged. Plaintiff asserts that by entering into the NDA Convergence “agreed to treat and
20 hold all Project information disclosed to it in strict confidence.” (Doc. 1 at 8.) Plaintiff
21 further asserts that Convergence entered into the NDA “for the benefit of [Plaintiff].” (Doc.
22 1 at 9.) It is undisputed, however, that Plaintiff was not a signatory to the NDA.

23 Throughout the course of the Project, Convergence made eight Project related
24 shipments of Convergence products to Helvetia’s Arizona office and engaged in frequent
25 communications with Helvetia and other project personnel. In February 2014, at the request
26 of Helvetia, Garrett, on behalf of Convergence, attended a Project meeting at Helvetia’s
27 Arizona office. Garrett gave a single presentation at the meeting regarding Convergence’s
28 products. According to Plaintiff, the Arizona meeting also included discussions, review,

1 and testing of the incontinence detection solution proposed to Plaintiff at that time.
2 Plaintiff also claims that during his time in Arizona, Garrett was privy to discussions
3 regarding certain of Plaintiffs trade secrets. (Doc. 19-1 at 5.) Plaintiff contends that it made
4 a presentation to the meeting attendees, including Garrett, explaining that the Project was
5 confidential to Plaintiff and that all information, designs, and intellectual property
6 generated from the Project were owned by Plaintiff.

7 Sometime after Convergence's involvement in the Project ceased, Convergence
8 filed for and was issued United States Patent No. 10,134,489 (the "Patent"). Garrett is
9 named as an Inventor on the Patent, but Convergence is the named assignee. Plaintiff
10 claims that the Patent improperly uses and discloses Plaintiff's trade secrets that
11 Convergence and Garrett learned at the Arizona meeting. As a result, Plaintiff brought this
12 action alleging, *inter alia*, misappropriation of trade secrets and breach of an implied in
13 fact contract to maintain the confidentiality of any information disclosed during the Project.
14 Convergence and Garrett move, in separate motions, to dismiss the Complaint in full for
15 lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) and for
16 improper venue pursuant to Rule 12(b)(3). (Doc. 14, 15.) Plaintiff responded in opposition
17 to Defendants' motions arguing that Defendants are subject to personal jurisdiction
18 pursuant to Rule 4(k)(1), or in the alternative Rule 4(k)(2). In a separate paper, Plaintiff
19 requested the Court to issue an order granting 90 days for Plaintiff to conduct jurisdictional
20 discovery. (Doc 18.)

21 DISCUSSION

22 I. Motions to Dismiss for Lack of Personal Jurisdiction

23 A. Legal Standard

24 "When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff
25 bears the burden of demonstrating that the court has jurisdiction over the defendant."
26 *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). Where, as here, the
27 motion to dismiss a complaint for lack of personal jurisdiction "is based on written
28 materials rather than an evidentiary hearing, 'the plaintiff need only make a prima facie

1 showing of jurisdictional facts.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797,
2 800 (9th Cir. 2004).

3 When determining the sufficiency of a prima facie showing, “[t]he court may
4 consider evidence presented in affidavits.” *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th
5 Cir. 2001). The court must assume as true all uncontroverted facts in the complaint and
6 must interpret all evidentiary disputes in the plaintiff’s favor. *See Schwarzenegger*, 374
7 F.3d at 800. However, “the plaintiff cannot simply rest on the bare allegations of its
8 complaint” if controverted by evidence incorporated into the defendant’s motion. *Id.*
9 (internal quotation omitted); *see also Data Disc, Inc. v. Sys. Tech. Assocs.*, 557 F.2d 1280,
10 1284 (9th Cir. 1977) (A court “may not assume the truth of allegations in a pleading which
11 are contradicted by affidavit.”). All evidence must be admissible to be considered. *See*
12 *Travelers Cas. & Sur. Co. of Am. v. Telstar Const. Co., Inc.*, 252 F. Supp. 2d 917, 923 (D.
13 Ariz. 2003).

14 **B. Personal Jurisdiction**

15 A federal court sitting in diversity “applies the personal jurisdiction rules of the
16 forum state provided the exercise of jurisdiction comports with due process.” *Scott v.*
17 *Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). The Arizona long arm statute is co-extensive
18 with the limits of federal due process. *See Doe v. Am. Nat’l Red Cross*, 112 F.3d 1048,
19 1050 (9th Cir. 1997) (citing *Batton v. Tenn. Farmers Mut. Ins. Co.*, 153 Ariz. 268, 270,
20 736 P.2d 2, 4 (1987)); *see also* Ariz. R. Civ. P. 4.2(a). “Due process requires that
21 nonresident defendants have certain minimum contacts with the forum state, so that the
22 exercise of personal jurisdiction does not offend traditional notions of fair play and
23 substantial justice.” *Doe*, 112 F.3d at 1050 (citing *Int’l Shoe Co. v. Wash.*, 326 U.S. 310,
24 316 (1945)).

25 There are two types of personal jurisdiction—general and specific. *See Daimler AG*
26 *v. Bauman*, 571 U.S. 117, 126–27 (2014). Plaintiff does not argue that Convergence or
27 Garrett is subject to general personal jurisdiction in Arizona; thus, only specific personal
28 jurisdiction need be considered.

1 **1. Convergence**

2 Convergence has sufficient minimum contacts with Arizona to be subject to specific
3 personal jurisdiction in the state. “There are three requirements for a court to exercise
4 specific jurisdiction over a nonresident defendant: (1) the defendant must either
5 ‘purposefully direct his activities’ toward the forum or ‘purposefully avail[] himself of the
6 privileges of conducting activities in the forum’; (2) ‘the claim must be one which arises
7 out of or relates to the defendant’s forum-related activities’; and (3) ‘the exercise of
8 jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.’”
9 *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (quoting
10 *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)). Plaintiff bears the
11 burden of establishing the first two prongs of the test. *Id.* If Plaintiff succeeds, the defendant
12 must show that exercising jurisdiction over it would be unreasonable. *Id.* at 1069.

13 **a. Purposeful Availment/Direction**

14 The first prong of the specific jurisdiction test is divided into two concepts:
15 “purposeful direction” and “purposeful availment.” *See Schwarzenegger v. Fred Martin*
16 *Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). Purposeful direction is typically used in tort
17 actions, while purposeful availment is typically used in contract actions. *Id.* Although
18 Plaintiff alleges claims that sound in both tort and contract, it may establish jurisdiction for
19 all claims under either test. *See Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015) (“If
20 personal jurisdiction exists over one claim, but not others, the district court may exercise
21 pendent personal jurisdiction over any remaining claims that arise out of the same
22 ‘common nucleus of operative facts’ as the claim for which jurisdiction exists.”).

23 Purposeful direction requires the defendant to “(1) commit[] an intentional act, (2)
24 expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to
25 be suffered in the forum state.” *Dole Food Co., Inc.*, 303 F.3d at 1111. Plaintiff does not
26 argue that Convergence expressly aimed any conduct at Arizona, or that it was foreseeable
27 that Plaintiff would suffer any harm in Arizona. Instead, Plaintiff focuses on
28 Convergence’s contacts with Arizona. In this regard, the purposeful availment analysis is

1 more appropriate.

2 Purposeful availment requires the defendant to “purposefully avail[] itself of the
3 privilege of conducting activities within the forum state, thus invoking the benefits and
4 protections of its laws.” *Schwarzenegger*, 374 F.3d at 802 (quoting *Hanson v. Denckla*,
5 357 U.S. 235, 253 (1958)). The purposeful availment analysis is satisfied when the
6 defendant deliberately engages in significant activities within the forum or has created
7 continuing obligations between itself and the forum’s residents. *Burger King*, 471 U.S.
8 462, 476 (1985). “A defendant must have ‘performed some type of affirmative conduct
9 which allows or promotes the transaction of business within the forum state.’” *Picot*, 780
10 F.3d at 1212 (quoting *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990)). A contract
11 with a forum resident does not automatically establish the requisite minimum contacts. *Id.*
12 The court must consider the circumstances surrounding the contract, such as “prior
13 negotiations and contemplated future consequences, along with the terms of the contract
14 and the parties’ actual course of dealing.” *Id.* (quoting *Burger King*, 471 U.S. at 479).

15 Plaintiff asserts that its claims arise out of Convergence’s breach of the NDA in
16 which it apparently claims status as a third-party beneficiary.² The NDA provides that any
17 dispute would be governed by Arizona law, and designates Arizona as the venue where
18 disputes arising out of the NDA would be arbitrated. Convergence correctly asserts that a
19 choice of law clause, standing alone, is not sufficient to confer jurisdiction. *Burger King*,
20 471. U.S. at 482. However, the choice of law and venue provisions are relevant factors. *Id.*
21 (finding that a forum choice of law provision combined with the defendant’s continuous
22 relationship with a forum resident reinforced the defendant’s “deliberate affiliation with
23 the forum State and the reasonable foreseeability of possible litigation there.”)

24 ² Plaintiff alleges in the Complaint that “by entering into the [NDA] . . . Convergence
25 agreed to treat and hold all Project information disclosed to it in strict confidence.” (Doc.
26 1 at 8.) Jerry Garrett’s affidavit, submitted in support of Convergence’s motion, states that
27 the NDA “does not mention [Plaintiff] or any purported intellectual property rights of
28 [Plaintiff],” but rather provides that “[a]ll Confidential Information shall remain the
property of the Discloser.” (Doc 14-1 at 3.) Garrett further proclaims that the NDA was
executed to “cover numerous projects where Helvetia wanted to use Convergence’s
commercially available RFID products.” *Id.* The Project at issue was one of those projects.
Garrett’s affidavit does not directly contradict Plaintiff’s claim that the NDA covered
Project information. Thus, Plaintiff’s allegation is assumed true.

1 In addition to the terms of the NDA, Convergence’s alleged course of performance
2 is also relevant. Plaintiff asserts that Convergence engaged in frequent communications
3 with Helvetia over the course of the Project, made several Project related shipments to
4 Helvetia’s Arizona office, and attended the Arizona meeting where Plaintiff’s confidential
5 information was allegedly shared.

6 Convergence first relies on *Toop, LLC v. USK Int’l, Inc.* for the proposition that
7 phone calls into the forum, even coupled with a single shipment into the forum, do not
8 constitute purposeful availment. CIV 10-1498-PHX-DKD, 2011 WL 13220338 (D. Ariz.
9 Mar. 4, 2011). In *Toop*, the plaintiff, an Arizona limited liability company, entered into a
10 contract with a California corporation for a single sale of soccer balls. *Id.* at *1. The soccer
11 balls were shipped into Arizona. *Id.* The court declined to extend personal jurisdiction over
12 the defendant for the plaintiff’s breach of contract action because the contract did not create
13 “continuing obligations” with the residents of Arizona. *Id.* at *3. Here, Convergence’s
14 relationship with Helvetia and Plaintiff extends beyond a once in time transaction.
15 Convergence agreed to design and develop software for the Project. Because of
16 Convergence’s agreement with Helvetia it sent a series of shipments to Arizona and
17 consistently communicated with Helvetia and other parties to the Project. This type of
18 ongoing relationship necessarily entails “continuous obligations”—the element missing in
19 *Toop*. Convergence cannot classify its involvement in the Project as a once in time
20 transaction.

21 Convergence similarly relies on *Picot v. Weston*, for the proposition that physical
22 entry into the forum does not necessarily satisfy the constitutional minimum contacts
23 requirement. 780 F.3d 1206 (9th Cir. 2015). In *Picot*, the parties entered into an oral
24 agreement that called for the defendant to develop technology, arrange for its testing, and
25 assist in marketing. *Id.* at 1212. The agreement was formed outside of the forum and it was
26 understood that the majority of the defendant’s performance under the contract would also
27 take place outside of the forum. *Id.* The defendant did travel to the forum on two occasions
28 as part of “broader efforts to develop and market the technology.” *Id.* at 1213. However,

1 the Court declined to exercise specific personal jurisdiction over the defendant because his
2 two trips to the forum held “no special place in his performance under the agreement as a
3 whole.” *Id.* Here, Convergence’s visit to Arizona was more than a stop on a marketing
4 campaign. The visit included discussions about Plaintiff’s requirements for the prototype
5 Convergence was helping design. The Arizona visit, as pled by Plaintiff, was a “very
6 important” aspect of the overall Project. (Doc. 19-1 at 5.)

7 The Court acknowledges that any one contact, on its own, may not constitute the
8 requisite minimum contacts. However, the minimum contacts analysis considers
9 Convergence’s Arizona contacts in their totality. *Burger King*, 471 U.S. at 476. In
10 summary, Convergence allegedly entered into a contract with an Arizona resident to work
11 on confidential projects for the Plaintiff. The Contract specified Arizona to be the venue
12 of and to provide the governing law for any future disputes regarding that confidentiality
13 obligation. Defendant engaged in an ongoing relationship with an Arizona based entity
14 and attended an alleged meeting in the state in which confidential information, allegedly
15 appropriated by Defendant, was allegedly shared with the Defendant. When these contacts
16 are considered together, they are sufficient to establish the first prong of the specific
17 jurisdiction test.

18 **b. “Arising Out Of”**

19 “The second prong of the specific jurisdiction test is met if ‘but for’ the contacts
20 between the defendant and the forum state, the cause of action would not have arisen.
21 *Terracom v. Valley Nat. Bank*, 49 F.3d 555, 561 (9th Cir. 1995) (citation omitted).

22 The Complaint asserts—and the Court must assume—that but for Convergence’s
23 involvement with the Project through Helvetia and attendance at the Arizona meeting,
24 Convergence would not have obtained the proprietary information wrongfully disclosed.
25 Plaintiff’s claims “arise out of Convergence’s entry into and breach of the [NDA].” (Doc.
26 1 at 9.) Convergence focuses its objection to personal jurisdiction on the first prong of the
27 test and does not dispute that Plaintiff’s claims arise out of Convergence’s contacts with
28 Arizona. Plaintiff has met its burden on the second prong of the specific jurisdiction test.

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1 availed itself of the forum, the purposeful interjection factor weighed in favor of
2 jurisdiction in the forum being reasonable).

3 Burden on Defendant: The Court is sensitive to the considerable burden placed on
4 a defendant forced to litigate in a foreign country under foreign law. However, “modern
5 advances in communications and transportation have significantly reduced the burden of
6 litigating in a foreign country.” *Sinatra v. National Enquirer, Inc.*, 854 F.2d 1191, 1199
7 (9th Cir. 1988). “Moreover, this factor is less salient when the defendant speaks English
8 and has traveled to the forum on business related to the instant action.” *Metro-Goldwyn-*
9 *Mayer Studios*, 243 F. Supp. 2d at 1093.

10 Additionally, for this factor to weigh against reasonableness, the “litigation must be
11 so gravely difficult that it puts the defendant at a severe disadvantage in comparison to his
12 opponent.” *Russo v. Manheim Remarketing, Inc.*, CV 11-393-PHX-JAT, 2012 WL
13 2191649, at *11 (D. Ariz. June 14, 2012). Because Plaintiff is not an Arizona citizen, it
14 would face similar burdens that accompany litigating away from home. While Arizona may
15 not be Convergence’s preferred forum, the burden to defend the action in Arizona is not so
16 great as to constitute deprivation of due process. This factor weighs in favor of finding
17 jurisdiction reasonable.

18 Conflict with Defendant’s Sovereignty: The Court is cautious to extend “our notions
19 of personal jurisdiction into the international field.” *Metro-Goldwyn-Mayer Studios*, 243
20 F. Supp. 2d at 1093. However, this factor cannot be dispositive, or it would always prevent
21 suit against a foreign national in the United States. *Id.* It should also be noted that
22 Convergence has not produced any evidence suggesting that a conflict exists. This factor
23 weighs in Convergence’s favor, but only slightly. *See In re Cathode Ray Tube (CRT)*, 2014
24 WL 2581525, at *8 (noting that the exercise of specific jurisdiction, rather than general
25 jurisdiction, mitigates the concern of international comity).

26 Arizona’s Interest: Arizona has a limited interest in adjudicating this dispute where
27 neither party is an Arizona citizen. However, Plaintiff is a United States citizen that claims
28 it was harmed by Convergence’s application for a United States Patent. Thus, United States

1 federal courts have an interest in hearing this case. *See In re Cathode Ray Tube (CRT)*,
2 2014 WL 2581525, at *9 (explaining that federal courts have an interest in hearing a case
3 where plaintiffs were United States citizens who alleged they were harmed by foreign
4 defendants' activities in the United States). This factor is neutral.

5 Efficiency: Arizona may not be the most efficient forum if much of the evidence is
6 located elsewhere. *See Metro-Goldwyn-Mayer Studios*, 243 F. Supp. 2d at 1093 ("In
7 determining the efficiency of the forum, the Court looks primarily at where the evidence
8 and witnesses are likely to be located."). However, Convergence has not indicated where
9 the majority of the evidence is located. Helvetia's relationship with Convergence is a
10 significant component of Plaintiff's claims, and Helvetia is located in Arizona. Thus, at
11 least to the extent that materials in the possession of Helvetia will be evidence in the suit,
12 Arizona is not an unreasonable forum. Based on the information provided, this factor is
13 either neutral or slightly favors jurisdiction.

14 Importance of Forum to Plaintiff's Interest in Effective Relief: The importance of
15 the forum to Plaintiff's interest in convenience and effective relief is significant. Plaintiff
16 has already tried to bring suit against Convergence in Plaintiff's home state of Indiana, but
17 the case was dismissed for lack of personal jurisdiction. (*Hill-Rom Services, Inc. v.*
18 *Tellisense Medical, LLC, et al.*, 1:17-cv-4725-WTL-MJD, Doc. 130) If Plaintiff is unable
19 to litigate this action in Arizona, it may be unable to litigate this action anywhere in the
20 United States. This factor weighs in favor of finding jurisdiction in Arizona reasonable.

21 Existence of Alternative Forum: Plaintiff bears the burden of proving that an
22 alternative forum is not available. *See Metro-Goldwyn-Mayer Studios*, 243 F. Supp. 2d at
23 1094. Hong Kong might be an alternative forum for this action. However, this factor is
24 significant only if other factors weigh against an exercise of jurisdiction. *Id.* (citing
25 *Corporate Inv. Business Brokers v. Melcher*, 824 F.2d 786, 791 (9th Cir.1987)).

26 The Court concludes that Convergence has failed to meet its heavy burden to
27 overcome the presumption of reasonableness. Convergence is subject to specific personal
28

jurisdiction in Arizona.³

2. Garrett

The Court must also determine whether Garrett may be independently subject to specific personal jurisdiction with respect to Plaintiff's claims. Typically, "a corporate officer who has contact with a forum only with regard to the performance of his official duties is not subject to personal jurisdiction in that forum." *Forsythe v. Overmyer*, 576 F.2d 779, 783–84 (9th Cir. 1978). However, "a court can assert jurisdiction over officers and employees if jurisdiction is supported by the long-arm statute of the forum state." *Brink v. First Credit Resources*, 57 F. Supp. 2d 848, 859 (D. Ariz. 1999). Because Arizona's long arm statute is coextensive with due process, personal jurisdiction over corporate officers is appropriate so long as the officer has sufficient minimum contacts with Arizona. *Id.* Because Plaintiff only asserts tort claims against Garrett,⁴ the purposeful direction test applies.

Purposeful direction requires the defendant to "(1) commit[] an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Dole Food Co., Inc.*, 303 F.3d at 1111. Plaintiff, however, does not argue that Garrett expressly aimed any conduct at Arizona, or that it was foreseeable that Plaintiff would suffer any harm in Arizona. Instead, Plaintiff argues that Garrett cannot evade jurisdiction by hiding behind a corporate shield because "he inserted himself into the case by misappropriating Hill-Rom's proprietary information." (Doc. 19 at 13.) Plaintiff's argument is unavailing. Because Plaintiff has not alleged facts necessary for the Court to find that Garret purposefully directed his activities to Arizona, the Court grants Garrett's Motion to Dismiss for lack of personal jurisdiction. Plaintiff will have 30 days from the date of this order to amend its complaint.

³ Because the Court finds that jurisdiction is proper under Rule 4(k)(1), the Court need not consider whether jurisdiction would be proper under Rule 4(k)(2).

⁴ Plaintiff's claims against Garrett include (1) Misappropriation of Trade Secretes Under the Defend Trade Secrets Act; (2) Misappropriation of Trade Secrets Under the Arizona Uniform Trade Secrets Act; (3) Misappropriation of Confidential Information; (4) Unfair Competition; (5) Unjust Enrichment; (6) Conversion.

1 **II. Motions to Dismiss for Improper Venue**

2 Because the Court finds that Convergence is subject to jurisdiction in Arizona,
3 venue is also proper in Arizona. *See* 28 U.S.C. § 1391(b) (“A civil action may be brought
4 in . . . any judicial district in which any defendant is subject to the court’s personal
5 jurisdiction with respect to such action.”); *Atlantic Marine Const. Co., Inc. v. U.S. Dist. Ct.*
6 *W. Dist. Tex.*, 571 U.S. 49, 56–57 (2013) (28 U.S.C. § 1391(b) “ensures that so long as a
7 federal court has personal jurisdiction over the defendant, venue will always lie”)
8 Convergence Motion to Dismiss for Improper Venue is denied.

9 Because the Court grants Garrett’s Motion to Dismiss for lack of personal
10 jurisdiction, Garrett’s Motion to Dismiss for Improper Venue is moot.

11 **III. Motion for Jurisdictional Discovery**

12 Plaintiff’s motion for jurisdictional discovery is moot in light of the Court’s
13 conclusion that Defendant Convergence is subject to personal jurisdiction in Arizona.

14 **IV. Motion for Protective Order**

15 Plaintiff has also moved in this action for a protective order pursuant to Rule 26(c).
16 In response to Plaintiff’s motion, Defendants stated “[s]hould the Court grant Hill-Rom’s
17 Motion for Jurisdictional Discovery or deny Defendants’ Motions to Dismiss Defendants
18 certainly will comply with the court’s schedule to meet and confer on an appropriate
19 protective order.” (Doc. 29 at 2.) To the extent Defendants still oppose Plaintiff’s request
20 for a protective order in this action, they must notify the Court and articulate the basis of
21 their opposition within **14 days** of the date of this order.

22 **CONCLUSION**

23 In light of Convergence’s contacts with Arizona, it will not offend traditional
24 notions of fair play and substantial justice for Convergence to be forced to litigate in
25 Arizona. Convergence is subject to specific personal jurisdiction in this Court, and its
26 Motion to Dismiss for Lack of Jurisdiction and Improper Venue is denied. As a result of
27 this holding, Plaintiff’s Motion for Jurisdictional Discovery is dismissed as moot.

1 Garrett's only contacts with Arizona were in his capacity as a corporate officer of
2 Convergence, and as a result he is not subject to personal jurisdiction in Arizona. Garrett's
3 Motion to Dismiss for Lack of Personal Jurisdiction and Improper Venue is granted.

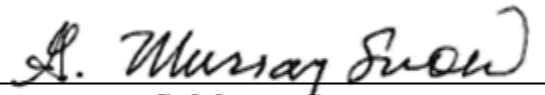
4 **IT IS HEREBY ORDERED** that Defendant Convergence Systems Limited, et al.'s
5 Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(3) (Doc. 14) is **DENIED**.

6 **IT IS FURTHER ORDERED** that Defendant Jerry Garret's Motion to Dismiss
7 pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(3) (Doc. 15) is **GRANTED** with leave to
8 amend. Plaintiff may file an amended complaint, if it wishes to do so, within **30 days** from
9 the date of this order.

10 **IT IS FURTHER ORDERED** that Plaintiff Hill-Rom Services Inc.'s Motion for
11 Jurisdictional Discovery (Doc. 18) is **DENIED** as moot.

12 **IT IS FURTHER ORDERED** that Defendant(s) must notify the Court within **14**
13 **days** of the date of this order of any remaining objection to Plaintiff's request for a
14 protective order (Doc. 28) in this action.

15 Dated this 31st day of October, 2019.

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18 G. Murray Snow
19 Chief United States District Judge
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